IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 130 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER

Versus

MOHAN KHEMRAJ VARMA

Appearance:

MR JD AJMERA for Petitioners

Respondent No.1 PARTY-IN-PERSON.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/10/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 15th April, 1997, passed by the learned Joint District Judge, Jamnagar, in Civil Regular Appeal No. 159/95, arising of the judgment and order dated 31st July, 1995, passed by the learned Civil Judge (SD)

Jamnagar, in Regular Civil Suit No. 53/93. The appellants before this court are the defendants and the respondent is the plaintiff.

The plaintiff was appointed as a Drawing Teacher in the year 1963 in a Primary School run by the defendants at Jamnagar, and on reaching the age of superannuation, retired from service on 31st May, 1994. The plaintiff instituted Regular Civil Suit No. 53/93 and prayed for a declaration that the plaintiff was a permanent and a confirmed employee of the defendants; that he was entitled to regular increment and permission to cross Efficiency Bar; that he was entitled to Selection Grade as per Chhatopadhyay's 4th Pay Commission report; that he was entitled to receive certified copy of the service book and the documents like character certificate and the medical certificate which were produced at the time of joining the service; the amounts of the Leave Travel Concession and the medical bills. The suit was tried by the learned Civil Judge (SD) Jamnagar. By his judgment and order dated 31st July, 1995, the learned Judge was pleased to hold that the plaintiff was entitled to all the reliefs prayed for by him, but the Civil Court had no jurisdiction to try the suit. The Court dismissed the suit in the following terms :

> The plaintiff's suit stands dismissed with clarification that the defendants may sympathetically allow the claim of the plaintiff in respect of the medical bill which is pending with them.
>
> Rest of the reliefs are already either given to the plaintiff or already forwarded to the defendants Kendriya Vidyalaya Sangathan, hence, are not required to be granted.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 59/95 before the District Court, Jamnagar. The appeal was allowed by the learned Joint District Judge, Jamnagar. The only issue which was answered by the learned Judge was as regards the maintainability of the suit in the Civil Court. The learned Judge held that the Civil Court had jurisdiction to entertain and try the suit. Accordingly, the appeal was allowed in the following terms :

> The appeal is hereby allowed.

The judgment and decree passed by the learned Civil Judge (SD) Jamnagar, in Regular Civil Suit No. 53/93 are hereby set aside and the suit is decreed as prayed for by the plaintiff.

The respondents have not filed any cross objections in the present appeal and therefore the findings arrived at by the learned Civil Judge (SD) Jamnagar, on Issues Nos. 1 to 5 and 7 to 9 (except Issue No. 6) are confirmed.

Hence, it appears that there being no challenge to the order of the trial court by the defendants, the findings recorded in favour of the plaintiff against the Issues Nos. 1 to 5 and 7 to 9 were confirmed. Feeling aggrieved, the defendants have preferred the present appeal.

Mr. Ajmera has submitted that as recorded by the learned trial Judge, most of the grievances of the plaintiff were satisfied pending the suit, and all his claims have now been paid except the claim of the plaintiff as regards the Selection Grade. He has vehemently argued that under the report of Chhatopadhyay Pay Commission, the plaintiff would have become entitled to the Selection Grade in the year 1998 before which he retired from service on reaching the age of superannuation. He, therefore, is not entitled to Selection Grade as prayed for by him. There being no challenge to the findings recorded by the learned trial Judge before the first appellate court, the issue has become final and can not be challenged in this Second Appeal. However, Mr. Ajmera has submitted that the lower appellate court has erred in observing that the respondents (i.e. the defendants) had not filed Cross Objections in the said appeal. Mr. Ajmera has submitted that the defendants did file Cross Objections in the Civil Regular Appeal No. 159/95 against the findings recorded by the learned trial Judge. Upon perusal of the record of the lower appellate court, I find that the defendants had filed Cross Objections in the Civil Regular Appeal No. 159/95 on 13th June, 1996, which were duly verified by the defendant no.4 and were also counter-signed by the learned District Government Pleader. The learned Joint District Judge had, on 26th July, 1996, made an order as under :

" To be heard along with the appeal. "

It is thus obvious that the Cross Objections were

preferred by the defendants in the Civil Regular Appeal No. 159/95, and the copy was served upon by the learned advocate appearing for the plaintiff on 7th August, 1996. For whatever reason, the said Cross Objections have been lost sight of and have not been decided at all. The matter, therefore, requires to be remanded to the learned Joint District Judge, Jamnagar, for decision on merits on the above referred Cross Objections filed on 13th June, 1996 at Ex. 10. So far as the decision as regards the jurisdiction of the Civil Court is concerned, I am in agreement with the first appellate court.

In the circumstances, the appeal is partly allowed. The judgment and order dated 15th April, 1997, passed by the learned Joint District Judge, Jamnagar, in Civil Regular Appeal No. 159/95, is confirmed. The judgment and order dated 31st July, 1995 of the learned Civil Judge (SD) Jamnagar in Regular Civil Suit No. 53/93 as regards the Issues Nos. 1 to 4 and 7 to 10 is confirmed. The decision on Issue No. 5 in so far as it relates to the release of regular increment pursuant to the permission to cross the Efficiency Bar is also confirmed. The matter is remanded to the learned Joint District Judge, Jamnagar, for hearing and decision on Cross Objections dated 13th June, 1996 filed by the defendants at Ex. 10 on the limited issue whether the plaintiff is entitled to the Selection Grade and consequent increments pursuant to the report of Chattopadhyay Pay Commission. The parties will bear their own costs. Registry will return the R&P forthwith.

(MS R.M.DOSHIT J)

JOSHI